

FILED

APR 1, 1998

SUPREME COURT OF WISCONSIN

Marilyn L. Graves
Clerk of Supreme Court
Madison, WI

In the Matter of the Amendment of
Supreme Court Rules: SCR Chapter
72 -- Retention and Maintenance of
Court Records

ORDER
No. 97-03

The court held a public hearing January 13, 1998 on the petition of the Wisconsin Court Records Management Committee seeking the amendment of the Supreme Court Rules, chapter 72, providing periods of time for the maintenance and retention of court records, including those maintained as official or original information on electronic or optical storage systems. The court has considered the petition, the presentations at the public hearing, and the materials filed in this matter.

IT IS ORDERED that, effective the date of this order, chapter 72 of the Supreme Court Rules is amended as follows.

SECTION 1. 72.01 (6) of the supreme court rules is amended to read:

(6) Lien claims. A statutory lien filed for services performed or materials provided: until satisfaction, expiration or entry of judgment, whichever occurs first, except as provided in subs. (6ag) and (6b).

SECTION 2. 72.01 (6ag) and (6b) of the supreme court rules are created to read:

(6ag) Construction liens. A statutory lien claim filed with the clerk of circuit court for services performed or materials provided for improvements, as defined in s. 779.01 (2) (a), stats.: 2 years after the date of filing the lien claim with the clerk of court if no action is brought and no summons and complaint are filed.

(6b) Condominium liens. A statement of condominium lien filed with the clerk of circuit court under s. 703.16 (4), stats., for unpaid assessments, including interest and actual costs of collection: 3 years after the date of filing the statement of condominium lien with the clerk of court if no action is brought to foreclose the lien.

SECTION 3. 72.01 (11), (12), (13), (14), (15), (16) and (17) of the supreme court rules are amended to read:

(11) Family case files. All papers deposited with the clerk of courts in every proceeding commenced under ~~chapter ch.~~ ch. 767 of the statutes , stats.: ~~50~~ 30 years after entry of judgment of divorce or entry of final order, except that after 30 years, for any case file for which support or maintenance payments are continuing to be made, 7 years after final payment or after order terminating maintenance is filed.

(12) Family court record. A history and index of proceedings kept in ~~book or card form~~ books, on cards or in electronic or optical format: ~~50~~ 30 years after entry of judgment of divorce or entry of final order, except that after 30 years, for any court record for which related support or maintenance payments are

continuing to be made, 7 years after final payment or after order terminating maintenance is filed.

(13) Family court minute record. A brief statement of in-court proceedings commenced under ~~chapter ch.~~ ch. 767 of the statutes , stats., generally maintained in the case file: ~~50~~ 30 years after entry of judgment of divorce or entry of final order, except that after 30 years, for any court minutes for which related support or maintenance payments are continuing to be made, 7 years after final payment or after order terminating maintenance is filed.

(14) Family maintenance and support payment records. Record of family maintenance and child support payments received by the clerk of circuit court: ~~50~~ 30 years after entry of judgment of divorce or entry of final order, except that after 30 years, for any payment records for which related support or maintenance payments are continuing to be made, 7 years after final payment or after order terminating maintenance is filed.

(15) Felony case files. All papers deposited with the clerk of courts in every proceeding commenced under ~~chapter ch.~~ ch. 968 of the statutes , stats., for felony offenses and all papers filed with the clerk of courts for the commitment of an inmate under ch. 980, stats.: 50 years after entry of final judgment; for Class A felonies, 75 years after entry of final judgment.

(16) Felony court record. A history and index of criminal proceedings kept in ~~book or card form~~ books, on cards or in electronic or optical format, including court records regarding the commitment of an inmate: 50 years after entry of final judgment; for Class A felonies, 75 years after final judgment.

(17) Felony minute record. A brief statement of in-court proceedings in a felony action, generally maintained in the case file, including minute records regarding the commitment of an inmate: 50 years after entry of final judgment; for Class A felonies, 75 years after final judgment.

SECTION 4. 72.01 (21), (22) and (23) of the supreme court rules are repealed.

SECTION 5. 72.01 (24) and (24a) of the supreme court rules are amended to read:

(24) Traffic forfeiture, conservation forfeiture and ordinance violation case files. All papers deposited with the clerk of circuit court in every proceeding commenced under ~~chapters chs.~~ chs. 29, 30, 48, 66, 125, 167, 343, 345, ~~and 350 and 938 of the statutes ,~~ stats.: 6 years after entry of final judgment.

(24a) Traffic forfeiture, conservation forfeiture and ordinance violation court record. A history and index of proceedings kept in ~~book or card form~~ books, on cards or in electronic or optical format: 6 years after entry of final judgment.

SECTION 6. 72.01 (41), (43) and (44) of the supreme court rules are amended to read:

(41) (title) Juvenile delinquency, juveniles in need of protection and services and children in need of protection and services case files. Except as provided in sub. (24), all ~~All~~ papers deposited with the clerk of circuit court, register in probate or clerk of court for juvenile matters in every proceeding commenced under ~~chapter ch.~~ ch. 48 or 938 of the statutes ,stats.: ~~10~~ 4

years after the 18th birthday of the juvenile or child; 8 years after the 18th birthday of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a Class A or Class B felony if committed by an adult.

(43) Juvenile court record. A history and index of proceedings under ~~chapter ch.~~ ch. 48 or 938 of the statutes , stats., kept in ~~book or card form~~ books, on cards or in electronic or optical format: 10 4 years after the 18th birthday of the juvenile or child; 8 years after the 18th birthday of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a Class A or Class B felony if committed by an adult.

(44) Juvenile minute record. A brief statement of in-court proceedings commenced under ~~chapter ch.~~ ch. 48 or 938 of the statutes stats., generally maintained in the case file: ~~10 4~~ 4 years after the 18th birthday of the juvenile or child; 8 years after the 18th birthday of the juvenile or child if he or she was adjudicated delinquent for committing an act that would be punishable as a Class A or Class B felony if committed by an adult.

SECTION 7. 72.01 (47) of the supreme court rules is amended to read:

(47) Court reporter notes. Verbatim stenographic ~~or,~~ shorthand, audio or video notes produced by a court reporter or any other verbatim record of in-court proceedings: 10 years after the hearing.

SECTION 8. 72.01 (53), (54) and (55) of the supreme court rules are amended to read:

(53) Juror questionnaires. A form sent to determine eligibility of prospective jurors: ~~3~~ 4 years after panel service.

(54) Jury array. A list of qualified persons selected ~~by jury commissioners~~ to serve as jurors: ~~3~~ 4 years after panel service.

(55) Record of jurors. A record of jurors summoned to serve on juries: ~~3~~ 4 years after panel service.

SECTION 9. 72.01 (63) of the supreme court rules is created to read:

(63) Inquest records. Records of an inquest under s. 979.08, stats., including testimony, evidence, written instructions and findings of probable cause or verdict: No retention; record is delivered to the coroner or medical examiner for safekeeping.

SECTION 10. 72.01 (64) of the supreme court rules is created to read:

(64) Incarcerated person records. Files containing prisoner litigation correspondence, pleadings and other documents; usually a writ of habeas corpus or certiorari; that are kept in group files until they are reviewed by a judge to determine if the action can be filed without the payment of filing fees and court costs: 5 years after date of submission. If the action meets the filing criteria as a civil action, it becomes a civil case and is retained in accordance with sub. (1).

SECTION 11. 72.05 of the supreme court rules is repealed and recreated to read:

72.05 (title) **Retention of court records maintained as official or original information on electronic or optical storage systems.**

(1) In this rule:

(a) "Accessible" means arranged, identified, indexed and maintained in a manner that permits the location and retrieval of the information in a readable format within a reasonable time by use of the proper hardware and software.

(b) "Accurately reproduce" means that, when displayed on a retrieval device or reproduced on paper, all information exhibits a high degree of legibility and readability.

(c) "Authenticity" means actually and reliably what is claimed and implies the ability to substantiate what is claimed.

(d) "Legible" means that, when displayed on a retrieval device or reproduced on paper, the quality of the letters, numbers or symbols enables the user to identify them positively and quickly to the exclusion of all other letters, numbers or symbols.

(e) "Readable" means that the quality of a group of letters, numbers or symbols is recognized as words, complete numbers or distinct symbols.

(2) Court records specified in SCR 72.01 and maintained as official or original information on electronic or optical storage systems shall be retained in the custody of the court for the minimum time periods specified in SCR 72.01. The system maintaining the court records shall meet all of the following requirements:

(a) The information retained shall be in a legible and accessible format capable of accurately reproducing the original, or of sustaining readability, for the time periods specified in SCR 72.01.

(b) Operational and technical system procedures shall protect the authenticity, confidentiality, accuracy and reliability of the information captured and provide the appropriate level of security to safeguard the integrity of the electronic or optically imaged information.

(c) The legibility and readability of a statistically significant sampling of electronic or optically imaged records shall be verified to ensure, to a 99.5% degree of confidence, that the information or images are legible and readable. Original optical images that are not legible or readable shall be flagged and rescanned for optimum image enhancement. Illegible images shall contain the scanned notation "best possible image".

(d) A suitable technical level of security shall be provided to protect electronic or optically imaged records that are required to be sealed, impounded or confidential and procedures shall be implemented to restrict access to only those persons authorized by statute or court order to access those records.

(e) Suitable hardware and software shall be provided to retrieve, read and timely reproduce on paper any record retained on electronic or optical storage systems.

(f) Procedures shall be in place and timely implemented for the backup, recovery and storage of electronically or optically stored records to protect those records against media destruction or deterioration and information loss.

(g) For disaster recovery purposes, at least one electronically or optically stored backup copy of all automated or optically imaged records shall be maintained using accepted

computer backup procedures; backup copies shall be stored in a separate location under appropriate environmental storage conditions; and a schedule to regularly update or supplement backup copies as a normal part of operations shall be implemented.

(h) At least one set of documentation for the electronic or optical systems that produced the automated or optically imaged records shall be maintained for the retention period of those records, and documentation shall be regularly updated or supplemented when revisions are made.

(i) Inspection of a statistically significant sampling of electronic or optically imaged records shall be conducted at least once every 3 years to verify, to a 99.5% degree of confidence, that there has been no degradation of the electronic medium or of the image quality.

(j) A media retention and conversion review schedule shall be established to ensure that electronically or optically stored information is reviewed for data conversion or recertification at least once every 3 years or more frequently when necessary to prevent the physical loss of data or technological obsolescence of the medium.

(k) Off-line electronic data or records stored on optical disk shall be transferred to new media or new optical disk and verified prior to the expiration of one-half of the useful life of the original media or disk as determined by the manufacturer's certified disk playback stability measured in years.

(L) Court records electronically or optically stored, including records stored off-line and on backup media, that are

expunged by court order under ss. 938.355 (4m) and 973.015, stats., shall be expunged by sealing or removing the record, obliterating the index to the record, or otherwise restricting access to the record.

(3) Electronically or optically stored records with historical or research value beyond the retention periods specified in SCR 72.01 shall be protected from destruction or media deterioration and transferred to the state historical society of Wisconsin in a computer-industry-accepted standard universal format, together with technical documentation.

(4) Records electronically or optically stored that have reached the minimum retention period specified in SCR 72.01 and that do not have historical or research value may be destroyed. For the circuit court automation program or other electronic court data systems and for write-once-read-many-times optical disk systems, records should be organized and formatted to permit the off-line disk or optical disk as a whole to be destroyed. For write-once-read-many-times disks, the destruction or sealing of the specific index reference to the obsolete record is sufficient.

(5) A written plan shall be provided to the director of state courts for prior approval to ensure compliance with this rule before a new electronic or optical imaging system is implemented and before an existing system is enhanced. The plan shall indicate all of the following:

(a) That a feasibility study was conducted and an analysis made of the system's cost and conversion costs compared to ongoing current costs.

(b) That a data migration plan has been developed for the retention period of electronically or optically stored records.

(c) If the system is an optical imaging system, that the custodian of the record has executed a statement of intent and purpose indicating all of the following:

1. The case type of record and years to be reproduced or transferred.

2. The subsection of SCR 72.01 that pertains to the type of court record being imaged.

3. The physical disposition of the original paper records.

4. If the system is a county system, the county resolution or ordinance authorizing optical imaging.

5. The certification of the records as received or created and transferred to optical disk format in the normal course of business.

(d) That the statement of intent and purpose was provided to the office of the director of state courts.

IT IS FURTHER ORDERED that, effective April 1, 1999 and unless otherwise ordered by the court prior to that date, 72.01 (24), (24a) and (24m) of the supreme court rules are amended to read:

(24) Traffic forfeiture, conservation forfeiture and ordinance violation case files. All papers deposited with the clerk of circuit court in every proceeding commenced under chs. 29, 30, 48, 66, 125, 167, 343, 345, 350 and 938, stats.: ~~6~~ 5 years after entry of final judgment.

(24a) Traffic forfeiture, conservation forfeiture and ordinance violation court record. A history and index of

proceedings kept in books, on cards or in electronic or optical format: ¶ 5 years after entry of final judgment.

(24m) Traffic forfeiture, conservation forfeiture and ordinance violation minute record. A brief statement of in-court proceedings in a forfeiture or ordinance violation action, generally maintained in the case file: ¶ 5 years after entry of final judgment.

IT IS FURTHER ORDERED that notice of these amendments of the Supreme Court Rules shall be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 1st day of April, 1998.

BY THE COURT:

Marilyn L. Graves, Clerk